

Amendment No. 1 to HB2246

Vaughan
Signature of Sponsor

AMEND Senate Bill No. 2077*

House Bill No. 2246

by deleting all language after the enacting clause and substituting:

SECTION 1. Tennessee Code Annotated, Title 7, Chapter 51, is amended by adding the following as a new part:

7-51-2201. Part definitions.

As used in this part:

(1) "Distributor" means a party engaged in moving energy commodities, industrial materials, or their derivatives, including the transport and delivery to a retailer or customer;

(2) "Energy" means a resource that is marketed, or that has the potential to be marketed, as a commodity because of the resource's value as a source of power or fuel;

(3) "Energy infrastructure" means the systems or assets, including storage tanks, pipelines, gas transmission lines, or related equipment, that are necessary to produce, generate, transmit, or distribute natural gas, liquefied petroleum, liquid petroleum, and other similar forms of energy to a wholesaler, retailer, distributor, or customer;

(4) "Industrial infrastructure" means the systems or assets, including storage tanks, pipelines, or related equipment, that are necessary to produce, transmit, or distribute industrial materials to a wholesaler, retailer, distributor, or customer;

(5) "Industrial materials":

(A) Means a basic substance found in its natural, modified, or semi-processed state, or an ingredient, solvent, or other component used as an input to a production process for subsequent modification or transformation into a finished good; and

(B) Includes ammonia, hydrogen, and carbon dioxide;

(6) "Local action" means an ordinance, resolution, regulation, code, requirement, policy, or other action or omission taken, enacted, adopted, or otherwise imposed by a political subdivision of this state;

(7) "Political subdivision" means a municipality; public corporation; body politic; authority; district; metropolitan government; county; agency, department, or board of those entities; or another form of local government;

(8) "Retailer" means a party who markets or sells energy or industrial materials to a customer; and

(9) "Wholesaler" means a party engaging in the bulk purchase and sale of energy products or industrial materials in the wholesale market for the purposes of reselling energy or industrial materials to a retailer.

7-51-2202. Prohibited policies.

(a) A political subdivision of this state shall not, arising from or as a result of a local action, prohibit the development and implementation of the types or sources of energy that may be used, delivered, converted, or supplied by the following entities:

(1) An electric utility, an electric cooperative, or an electric system that is owned or operated by a political subdivision;

(2) An entity that generates, sells, or transmits electrical energy in accordance with all applicable requirements of state and federal law;

(3) A gas utility or a gas system that is owned or operated by a political subdivision;

(4) A gas transmission company;

(5) A liquefied petroleum gas dealer, liquefied petroleum gas dispenser, or liquefied petroleum gas cylinder exchange operator; or

(6) Other liquid petroleum transmission, distribution, retail, or storage entities.

(b) A local action of a political subdivision is preempted and void if the local action, directly or indirectly, is or acts as:

(1) A de facto prohibition of the siting, or a prohibition of construction, expansion, or maintenance, of energy, industrial, or related transportation infrastructure within the jurisdictional boundary of a political subdivision. When determining whether a local action results in a de facto prohibition, factors to consider include, but are not limited to, the following:

(A) A fee imposed;

(B) An unreasonable timeframe for a ministerial action; and

(C) The local action's effect on the feasibility of the project;

(2) Regulation or enforcement of safety standards for interstate or intrastate pipeline facilities or interstate or intrastate pipeline transportation as those terms are defined in 49 U.S.C. § 60101; or

(3) A prohibition on the ability of a distributor, retailer, wholesaler, or other energy or industrial infrastructure entity to exercise its rights provided by state or federal law related to the siting of energy infrastructure or industrial infrastructure.

(c) This section does not prevent or preempt:

(1) A political subdivision that owns or operates an electric or natural gas system from promulgating rules, regulations, or policies related to the electric or natural gas system;

(2) A local action that is state-authorized, ministerial in nature pertaining to land use, generally applicable to similar types of commercial and industrial activities, and necessary to provide a public benefit;

(3) A local action that affects facilities for the transmission, distribution, collection, conversion, and use of solar energy;

(4) A local action to require a franchise from a political subdivision prior to providing electric or natural gas services within the jurisdictional boundaries of the political subdivision in accordance with state law;

(5) A local action to grant, deny, amend, or revoke a franchise to provide electric or natural gas services within the jurisdictional boundaries of the political subdivision in accordance with state law;

(6) A local action to establish, maintain, or enforce exclusive service areas for the provision of electric or natural gas services in accordance with state law;

(7) A local action arising from:

(A) Authority granted to administer a program in lieu of the department of environment and conservation regarding protection of human health, safety, or the environment if the grant of authority is authorized by federal or state statute or regulation;

(B) A permit or coverage under a permit issued by the department of environment and conservation or a permit by rule; or

(C) The groundwater protection program or the drinking water program administered by the department of environment and conservation, including, but not limited to, measures designed to be protective within designated source water or wellhead protection areas as defined in programs administered by the department of environment and

conservation under authority of the federal Safe Drinking Water Act (42 U.S.C. § 300f et seq.); or

(8) Reasonable police powers of a political subdivision to regulate the siting, construction, maintenance, or expansion of energy or industrial infrastructure along, over, or under the highways and streets within the political subdivision's corporate limits in order to reduce or prevent the risk of an eminent and substantial threat to human safety from the performance of those activities, including a political subdivision's right to charge reasonable, cost-based compensation for the use of the political subdivision's highways and streets.

However:

(A) A political subdivision does not have the right to prevent or prohibit a distributor, retailer, or wholesaler from constructing, expanding, or maintaining energy or industrial infrastructure within the limits of the political subdivision, so long as the energy or industrial infrastructure is being constructed, maintained, or expanded within the political subdivision in accordance with reasonable police powers regulations as described in this subdivision (c)(8); and

(B) This subdivision (c)(8) does not grant police powers to a political subdivision on matters of siting, construction, maintenance, or expansion of energy or industrial infrastructure subject to regulation by state or federal agencies.

(d) This section does not expand or alter the jurisdiction of a governmental entity charged with oversight of public utilities or electric utilities.

(e) This section does not expand or alter the regulation of wind energy facility siting provided in title 65, chapter 17.

(f) This section does not alter:

(1) Exclusive rights to provide electric or natural gas services under state law; or

(2) Exclusive service areas for the provision of electric or natural gas services under state law.

(g) This section does not allow an entity listed in subdivisions (a)(1)-(6) to provide electric or natural gas services within the exclusive service area of another provider of electric or natural gas services.

(h) Any aspect of a local action that violates subsection (a) or (b) that existed on or before the effective date of this act is preempted by this part and void.

7-51-2203. Conflict with federal law.

If this part conflicts with federal law requirements pertaining to the types of energy sources or industrial materials used, delivered, converted, or supplied by the entities described in § 7-51-2202(a)(1)-(6) to serve customers, then the federal law controls to the extent that this part conflicts with such federal law.

SECTION 2. If a provision of this act or the application of a provision of this act to any entity or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end, the provisions of this act are declared to be severable.

SECTION 3. The headings in this act are for reference purposes only and do not constitute a part of the law enacted by this act. However, the Tennessee Code Commission is requested to include the headings in any compilation or publication containing this act.

SECTION 4. This act takes effect July 1, 2022, the public welfare requiring it.